Supreme Court, U. S.
FILED
DEC 8 1975
MICHAEL RODAK, JR., CLERK

No. 75-311

# In the Supreme Court of the United States

OCTOBER TERM, 1975

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HUGH D. JASCOURT, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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ROBERT H. BORK,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

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Petitioner seeks reimbursement for moneys spent allegedly in reliance on oral statements by government officials who lacked legal authority to contract on behalf of the United States.

On June 30, 1972, the United States Department of Labor contracted with the National Center for Dispute Settlement ("NCDS") for a research project involving the study of state and local government labor relations. The contract was expected to be

completed within two years but was initially funded only for the first year (Pet. 4-5). The contract was managed through the Public Employment Relations Research Institute, an affiliate of NCDS, which was established and directed by petitioner (Pet. App. C-1 to C-2).

On August 7, 1973, the Department of Labor advised petitioner that it had decided not to fund the project for a second year. All outstanding invoices for expenses incurred during the first year were paid, and NCDS has made no further requests for payment.

Petitioner thereafter filed this action in the Court of Claims seeking recovery of $17,513.63 from the United States. He alleged that he had personally expended these funds in order to continue the NCDS research project for a second year, in reliance upon statements made in the spring of 1973 by officials of the Department of Labor who had assured him that the project would be continued for a second year (Pet. 5-7). The Court of Claims granted summary judgment for the United States and dismissed the action on the ground that neither of the officials who allegedly gave assurances to petitioner "had actual authority to bind the Government by either written or oral contract" (Pet. App. A-2). The court concluded that under pertinent Department of Labor regulations, only duly designated contracting officers had "legal authority to contractually bind the Government, and no contract with plaintiff was executed



or approved by an authorized official of the Government" (*ibid.*). The court further found that these regulations were published in the Federal Register, and that plaintiff was deemed to have had legal notice that the officials with whom he dealt lacked authority to contract on behalf of the United States (*ibid.*).

Petitioner does not challenge the findings of the court below that the Department of Labor officials upon whose oral statements he allegedly relied had no legal authority to bind the United States contractually (Pet. 8),[1] and that no contract for the second year of the project had been executed or approved by an authorized government official. As a necessary concomitant of the doctrine of sovereign immunity, "[a] person negotiating with an officer or agent of the Government must inform himself regarding the authority of such individual, since an officer of the Government cannot bind the Government with respect to matters beyond the limit of his authority." *Max Drill, Inc.* v. *United States*, 427 F. 2d 1233, 1243 (Ct. Cl.). Since the officers with whom petitioner dealt lacked authority, the Court of Claims correctly dismissed petitioner's claim.

Moreover, this is not a case in which it may be said that the private party was misled as to the authority of the official with whom he dealt. Depart-

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[1] The burden of proving that those officials had authority to commit the government rested on petitioner (Pet. App. A-2). *Housing Corporation of America* v. *United States*, 468 F.2d 922, 925 (Ct. Cl.).

ment of Labor regulations expressly provide that only duly designated contracting officers have legal authority to bind the United States. 41 C.F.R. 29-1.401(b)(4)(i). Petitioner therefore was on notice that the officials with whom he dealt, who were not designated contracting officers, lacked authority. See *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380, 384-385. Therefore, even his good faith belief in the authority of the employees who allegedly purported to bind the United States (Pet. App. A-2), or their own misconception of the scope of their authority,[2] would not subject the government to liability. 332 U.S. at 383-384.

The agents' lack of authority to bind the United States in contract distinguishes the instant case from the authorities upon which petitioner relies.[3]

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[2] To the extent that petitioner's claim sounds in tort, rather than contract, it is barred by the misrepresentation exception to the Federal Tort Claims Act, 28 U.S.C. 2680(h), which precludes recovery on claims arising out of negligent, as well as willful misrepresentation. *United States* v. *Neustadt*, 366 U.S. 696, 702. Contrary to petitioner's assertion (Pet. 10), the United States cannot be held liable solely on the basis of "equitable considerations", where no legally binding contract exists. *United States* v. *Minnesota Mutual Investment Co.*, 271 U.S. 212, 217.

[3] The authority of the government agent to contract was not at issue in *Thomson* v. *United States*, 357 F.2d 683 (Ct. Cl.), *State House, Inc.* v. *United States*, 157 F. Supp. 853 (Ct. Cl.), and *New York Mail & Transportation Co.* v. *United States*, 154 F. Supp. 271 (Ct. Cl.). The other cases cited by petitioner concern the government's liability for additional work performed under a valid contract at the instruction of an authorized representative of its contracting officer. *Max Drill, Inc.* v. *United States*, 427 F.2d 1233 (Ct. Cl.); *Fox Valley Engineering, Inc.* v. *United States*, 151 Ct. Cl. 228.



It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

DECEMBER 1975.

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